

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DWAYNE ANTHONY JOHNSON,

Plaintiff,

v.

PETER E. SICES, et al.,

Defendants.

Case No. 1:19-cv-113

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendants Sices and Hoover moved for summary judgment (ECF No. 36) and Defendants Fogarty, Karnitz, and Baker also moved for summary judgment (ECF No. 73). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending this Court grant both motions, dismiss Plaintiff's Complaint, and certify that an appeal of this decision would not be taken in good faith. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. Defendants filed responses to Plaintiff's objections. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff argues that the Magistrate Judge erred in finding Plaintiff did not have a history of recent falls when Defendant Sices conducted an October 2017 assessment (ECF No. 74 at PageID.697, 702-704). Plaintiff states that Defendant Sices had knowledge of an October 1997

medical record that referenced Plaintiff's fall down a flight of stairs (*id.* at PageID.697-698). Plaintiff's objection is misplaced. The Magistrate Judge's reference to "*recent* falls on the stairs" would not necessarily include falls from 20 years prior (R&R, ECF No. 73 at PageID.692, citing ECF No. 38 at PageID.480 [emphasis added]). This objection is therefore denied.

In the remainder of Plaintiff's objections, Plaintiff merely reiterates the grounds for his Complaint and expresses his disagreement with the Magistrate Judge's recommendation (ECF No. 74 at PageID.698-715). "[A]n objection that does nothing more than state a disagreement with the magistrate's suggested resolution, or simply summarizes what has been presented before, is not an 'objection' as that term is used in the context of Federal Rule of Civil Procedure 72." *Brown v. City of Grand Rapids, Michigan*, No. 16-2433, 2017 WL 4712064, at *2 (6th Cir. June 16, 2017) (citation omitted). Only those objections that are specific are entitled to a de novo review under the statute. *Mira v. Marshall*, 806 F.2d 636, 637-38 (6th Cir. 1986) (per curiam). For this reason, and those reasons more fully stated by Defendants in their responses (ECF Nos. 77-78), Plaintiff's objections fail to demonstrate any factual or legal error in the Magistrate Judge's analysis or conclusion. The objections are therefore denied.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Consistent with the Magistrate Judge's recommendation, the Court also certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007). Therefore:

IT IS HEREBY ORDERED that Plaintiff's Objections (ECF Nos. 74 & 76) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 73) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendants Sices and Hoover's Motion for Summary Judgment (ECF No. 36) is GRANTED.

IT IS FURTHER ORDERED that Defendants Fogarty, Karnitz, and Baker's Motion for Summary Judgment (ECF No. 51) is GRANTED.

IT IS FURTHER ORDERED, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith.

Dated: March 26, 2020

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge